

1 UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF TEXAS

3 SAN ANTONIO DIVISION

4 UNITED STATES OF AMERICA, § CRIMINAL NO. 5:12-102-OLG-1

5 §

6 §

7 v. § March 31, 2014

8 ANTONIO PENA ARGUELLES, §

9 §

10 DEFENDANT. §

11 TRANSCRIPT OF SENTENCING

12 BEFORE THE HONORABLE ORLANDO L. GARCIA

13 CHIEF DISTRICT COURT JUDGE

14 APPEARANCES:

15 For the Government: CHARLIE STRAUSS, AUSA
16 CHARLIE LEWIS, AUSA
17 MARY NELDA VALADEZ, AUSA
18 Office of US Attorney
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20 San Antonio, Texas 78216

21 For the Defendant: GERALD HARRIS GOLDSTEIN, ESQ.
22 VAN HILLEY, ESQ.
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transcription

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P-R-O-C-E-E-D-I-N-G-S

THE COURT: Now proceeding to the sentencing matter: The offense level in this matter is 31, the criminal history category is one. The range of punishment is 108 to 135 months. Three years supervised release. A fine range of 15,000 to \$500,000. Restitution is not applicable in this case, other than we have the forfeiture proceedings and the special assessment of \$100.

Any allocution by the government?

MR. STRAUSS: Your Honor, we would ask that the Court accept the recommendation we have made as set forth in full in the sealed sentencing memorandum filed before the Court. In addition to that, we would ask the Court to impose a supervised release term of three years and a mandatory assessment of \$100. We don't think a fine would be appropriate, given the amount of assets that the defendant has agreed to forfeit to the United States.

THE COURT: In the forfeiture proceeding?

MR. STRAUSS: Yes, sir.

THE COURT: Right.

MR. STRAUSS: And they are the assets that are set forth in the superseding information.

THE COURT: Right.

MR. STRAUSS: And the demand for criminal forfeiture.

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1 THE COURT: All right.

2 MR. GOLDSTEIN: There's a substantial amount that's
3 being forfeited in the criminal proceedings, Your Honor.

4 THE COURT: Okay. Mr. Goldstein or Mr. Van Hilley,
5 anything on behalf of your client?

6 MR. GOLDSTEIN: Nothing further Your Honor. May we
7 approach the bench very briefly, Your Honor.

8 THE COURT: Sure, of course.

9 (At sidebar.)

10 MR. GOLDSTEIN: My understanding is he gets
11 good-time credit for the detention. And it's my
12 understanding that a calculation would put him at discharge
13 on April 12th in about two weeks, less than two weeks. As a
14 consequence, we would respectfully request that the Court
15 expedite the issuance of a judgment and commitment order.

16 THE COURT: It will be today.

17 MR. GOLDSTEIN: Yes, sir. And I believe we -- I
18 did try and reach you, and I apologize. I've got -- we
19 probably need to set down the forfeiture. I'm going to
20 desperately try and settle this thing so we don't have to
21 deal with it. They've been very gracious in giving me their
22 time.

23 THE COURT: And when are they not?

24 MR. GOLDSTEIN: On occasion, Your Honor.

25 THE COURT: Well, I'm sure they'll work on it, if

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1 you give them a list.

2 MR. GOLDSTEIN: Yeah.

3 THE COURT: All right. And then?

4 MR. GOLDSTEIN: And I would like -- can we have 90
5 days so that we can try and work this out?

6 THE COURT: Okay. All right. It's in agreement
7 then?

8 MR. GOLDSTEIN: Yes, sir.

9 THE COURT: All right. Thank you.

10 (End of side-bar.)

11 THE COURT: Okay. And, Mr. Goldstein or Mr. Van
12 Hilley, any allocution on behalf of your client?

13 MR. GOLDSTEIN: Nothing further on behalf of
14 Mr. Pena.

15 THE COURT: Okay. Mr. Pena, would you like to say
16 anything at this time before I proceed to sentencing?

17 DEFENDANT PENA ARGUELLES: No, Your Honor. Thank
18 you very much.

19 THE COURT: Okay. Any legal reason I cannot
20 proceed, counselor?

21 MR. GOLDSTEIN: I am aware of none, Your Honor.

22 THE COURT: Okay. Then the Court has considered
23 the guidelines in an advisory capacity, and pursuant to the
24 Sentencing Reform Act and the policy statements, including
25 the grounds for departure, U.S. versus Booker and Gall v.

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1 U.S. and reviewing the 18 U.S. Code, Section 3553 factors,
2 has considered the guidelines as an official benchmark and
3 frame of reference, but finds that an appropriate sentence
4 can be achieved by imposing a sentence outside the guideline
5 range.

6 Specifically, the defendant shall be sentenced
7 outside the guideline range as agreed in a binding plea
8 agreement pursuant to Federal Rule of Criminal Procedure
9 11C1C to reflect the seriousness of the offense, to promote
10 respect for the law, provide just punishment for the offense.

11 Pursuant to the Sentencing Reform Act and U.S.
12 applicable case law, the Court sentences Antonio Pena
13 Arguelles to custody of the Bureau of Prisons for a term of
14 30 months.

15 The defendant also agrees or has agreed and
16 stipulates that the subject real properties and subject
17 personal properties contained in the superseding information
18 filed in this case are subject to forfeiture to the United
19 States of America pursuant to 18 U.S. Code, Section 982A1 for
20 violations of 18 U.S. Code, Section 1956H.

21 The Court's final judgment of forfeiture shall be
22 entered at some point, and the said order shall be
23 incorporated by reference into the Court's judgment and
24 commitment order, which will be issued today. It's ordered
25 the defendant pay a special assessment of \$100.

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1 Upon release from imprisonment, the defendant shall
2 be placed on supervised release for a term of three years to
3 comply with all conditions of supervision. While on
4 supervised release, the defendant shall comply with all
5 mandatory and standard conditions of supervision. The Court
6 advises the defendant you do have the right to appeal this
7 sentence, unless previously waived. And the Court will order
8 the worksheet and this be sealed.

9 Anything else, Mr. Goldstein?

10 MR. HILLEY: Your Honor, we just filed a waiver of
11 indictment prior to this matter being heard by the Court.

12 THE COURT: Yes, I have that, and I have signed it.

13 MR. GOLDSTEIN: And I would remind the Court, Your
14 Honor, that the agreement entered into between my client,
15 Mr. Pena, and the government, able counsel for the
16 government, provides that there is an exception with respect
17 to the forfeiture of a certain sum, which is -- remains to be
18 either litigated or resolved by settlement between the
19 parties, Your Honor.

20 THE COURT: Okay. Mr. Pena, have you understood
21 everything that has occurred here today?

22 DEFENDANT PENA ARGUELLES: Yes, Your Honor.

23 THE COURT: Do you have any questions?

24 DEFENDANT PENA ARGUELLES: None, Your Honor.

25 THE COURT: Okay. Thank you. Then we're in

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1 recess. And, Jessica, if you will get this signed today.

2 THE COURT SECURITY OFFICER: All rise.

3 (Adjournment.)

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1 UNITED STATES DISTRICT COURT)

2 WESTERN DISTRICT OF TEXAS)

3 I certify that the foregoing is a correct
4 transcript from the record of proceedings in the
5 above-entitled matter. I further certify that the transcript
6 fees and format comply with those prescribed by the Court and
7 the Judicial Conference of the United States.

8 Date signed: January 7, 2016.

9
10 /s/Leticia Rangel

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